

# **NOTHING WORKS: THE ENLIGHTENMENT, DISCOURSE, AND THE FAILURE OF REASON**

An Undergraduate Research Scholars Thesis

by

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## **ABSTRACT**

Nothing Works: The Enlightenment, Discourse, and the Failure of Reason (May 2014).

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In this project I study the history of the American penal system. By studying the history of both the structure and ideology behind the penitentiary, I hope to come to a greater understanding of how we have arrived at our current criminal justice policies. I then hope to do both an historical and philosophical account of discourse surrounding the criminal, and use this to help understand how penal policies were enacted. By studying political actors, the media, and the individual citizen, I hope to provide an explanation of our current system of mass incarceration. Further, I plan to demonstrate the Manichean nature of political discourse, and to propose a critical theory of our political system (using the prison system as a specific example) in order to deal with our dangerously over-simplified political rhetoric. By advocating a critically empathic approach to not only crime, but the issue of democracy as a whole, I hope to illustrate how this sort of perspective is necessary for the functioning of any democracy inhabiting the post-modern era.

## **ACKNOWLEDGEMENTS**

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Without their generous support, none of this would have been possible.

# **CHAPTER I**

## **AN INTRODUCTION**

Before beginning any piece of writing, especially one concerning history, it would be irresponsible to not at least comment on the subjective nature of the claims that will follow from this point. Certainly, the dates and events did happen. The statistics can be said to be true as well; however, it is in the interpretation that it becomes complicated. If a certain ideological bias is detected, read on. This sort of thing is inevitable; this is certainly not a scientific writing (since we all know that science itself is free of bias at all times). As will be discussed later on, this paper suggests not a certain ideology, or even a particular solution to the issue discussed throughout. Instead, I suggest a type of methodology, an active critical theory, which can be used to analyze not only the prison, but I hope all of society. Critical theory is associated with the political left, however more broadly construed I believe that this sort of critical theory advocates not a specific political position, but more generally advocates taking and forming a critical and informed view of society as a whole. The purpose of this paper then is not to advocate a “conservative” or “liberal” world-view (in fact, upon scrutiny it supports neither). Instead, by using an analysis of discourse, of history, and of society in general, I think that it can advocate a “third way”, one which focuses not on strict partisan ideology, but instead on empathy. It is just this, empathy, which the author believes to be the sole claim of this short essay, although the reader is free to take from it what they like.

## **CHAPTER II**

### **A SUMMARY OF PENOLOGICAL HISTORY**

With the invention of legal codes came inevitable violators of the laws, and governments were forced to find ways to deal with these violations. Most early criminal codes utilized corporal punishment as a means of enforcing the breach of law. In an era where each crime was a considered a personal injury to the king or state, criminal penalties took on a sort of symbolic function in which just revenge was enacted on the law violator.<sup>1, 2, 3</sup>

Thus, criminal justice prior to the Enlightenment was mostly a practice of just revenge, enforcing the laws of the state through strict punitive actions which seem cruel or unusual by today's standards.<sup>4</sup> It was during the European enlightenment that the shift from strict corporal punishment to rehabilitative, "humane", and deterrent punishment was made. As the enlightenment spread humanistic values, penal theorists quickly took note and began to apply these conceptions to the problem of criminality. Various theories would spring up in this time throughout the continent, and these discussions would lead to a radical reformulation of the idea of prison and punishment.<sup>5, 6, 7</sup>

While there are myriad enlightenment theorists who influenced the development of the penitentiary, a few deserve special attention. I will begin with Cesare Beccaria, an Italian

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1 Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. New York, NY, Random House Inc., 1975.

2 Walter, Mobley. *The Ethics of Punishment*. Hamden, CT, Archon Books, 1968.68-95.

3 Garland, David. *Punishment and Modern Society*. Chicago, IL, University of Chicago Press, 1990.

4 Golash, Deirdre. *The Case Against Punishment*. New York, NY, NYU Press, 2005.

5 Foucault, Michel. *Discipline and Punish: The Birth of the Prison*.

6 Walter, Mobley. *The Ethics of Punishment*.

7 Golash, Deirdre. *The Case Against Punishment*.

nobleman and philosopher, who was one of the earliest and most influential, publishing the seminal "On Crimes and Punishments" in 1764. In this work, Beccaria lays out his "rational choice theory", which applies Enlightenment theories of reason and self-interest to the problem of crime. According to Beccaria, crime is committed not because of an inherent evil of the criminal, but instead because he has used his reason and concluded that crime was the most reasonable choice among those presented to him. By weighing his options, the criminal will always choose the option that has the greatest benefit and least risk. Following the logic of this theory, Beccaria then proposes a deterrent theory, which is unique to the Enlightenment and in many ways is still in use today. Beccaria proposes that if a criminal is to consistently choose the most "beneficial" option, by providing swift and sure punishment for all violations of the law, crime can be minimized. Finally, as an Enlightenment theorist Beccaria is certain to protect the humanity of the prisoner, explaining that punishment should be limited to that which is beneficial to the deterrence and reform of the criminal.<sup>8</sup>

The Enlightenment was rife with prison theorists and reformers. Englishman John Howard was central to the penal reform movement in England, the country where much of the developments in penology would eventually influence thinkers in the United States. Along with Beccaria and Howard, Jeremy Bentham stands as one of the most important thinkers in the development of the modern penitentiary. While having a complex theory of punishment himself, one of his most interesting developments was the "panopticon". A central feature to early penitentiaries, the panopticon took various forms, but typically was composed of a raised central platform with prison cells radiating outwards. By having this central view, a single prison guard would be able to observe the activities of any convict at any particular time, allowing for a new level of

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<sup>8</sup> Beccaria, Cesare. *On Crimes and Punishment*. Cambridge University Press, 1995.

observation for the prison guard, and a unique increase in observation of the criminal.

Prior to the Revolutionary War, there were no prisons as we know them. While there were town jails, these served primarily to hold those awaiting trial, debtors, and those who were being held prior to execution. Although criminal laws varied throughout the colonies, generally punishments for crimes took the form of physical punishment, such as “flogging, branding, mutilation...hangings, public humiliation, and banishments.”<sup>9</sup> However, while these extreme measures were often taken, as in Europe it was rather rare to actually be confined in penal institutions. It was through physical punishment, and not through confinement that punishment was traditionally meted out in the American Colonies.

Following the end of the war, reformers inspired by the ideas of thinkers like Bentham, Beccaria, and Howard began to push for a new form of criminal punishment. Soon after the war, Quaker activists in Pennsylvania created the Walnut Street Jail, a jail that practiced Beccaria’s revolutionary emphasis on incarceration over corporal punishment. Offenders were not punished physically; instead the activists chose to take a spiritual, and more “enlightened” approach. Originally constructed as a large building merely to house a collection of inmates, they eventually adopted European penal ideas and began to separate the more serious offenders, in the hope that these convicts would be able to reflect on their crimes and come to some sort of ethical or religious awakening. The introduction of these separate cells in the Walnut Street Jail served as the germ for what would eventually become the world’s first “penitentiary” system.<sup>10</sup>

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9 Rafter, Nicole and Stanley, Debra. *Prisons In America*. ABC-CLIO, 1999:3.

10 Hawkins, Gordon. *The Prison: Policy and Practice*. Chicago, IL: University of Chicago Press, 1982.

De Beaumont, Gustave and De Tocqueville, Alexis. *On the Penitentiary System In The United States And Its Application In France*. Southern Illinois University Press, 1964.

Rafter, Nicole and Stanley, Debra. *Prisons In America*. ABC-CLIO, 1999:1-5



Opened in late 1829, Eastern State Penitentiary in Pennsylvania is widely regarded as the world's first true penitentiary.<sup>11</sup> Modeled after the Walnut Street Jail's isolated confinement method, the prisoners were kept in separate cells for long periods of time, expected to remain in silence and work in order to repay their debts and come to a spiritual awakening. This method, known as the "Pennsylvania System" was used in a number of prisons throughout the state, and was deeply influenced not only by the design of the Walnut Street Jail, but also on the ideas of enlightened thinkers like Jeremy Bentham. One of the key features of Eastern State Penitentiary is its panopticon, based on a similar model to the one initially invented by Bentham. Eastern State Penitentiary stood as a symbol of Enlightenment penology, adopting the most up to date methods of incarceration, and combining the principles of deterrence (the building itself was intimidating, resembling an impregnable fortress) and rehabilitation. This commitment to rehabilitation was unique, and what set it apart as a "penitentiary" from the various "jails" around the country.<sup>12</sup>

However, while the Pennsylvania system took hold in many parts of the state, a competing prison program, known as the "Auburn System" would eventually win out. The Auburn or Congregate system utilized the silence and cell system of the Pennsylvania system; however it also used communal labor as a means of punishment and reform. Eventually, due to the cost-effectiveness and practicality of this system it won out, becoming the method of incarceration most used throughout the United States. In fact, many of the initial assumptions of the Pennsylvania system, such as the complete isolation, proved less humane than originally considered, which proved to be another factor in the eventual adoption of the congregate system

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<sup>11</sup> Rafter, Nicole and Stanley, Debra. *Prisons In America*. ABC-CLIO, 1999:2-7

<sup>12</sup> Ibid., 7-10.

in American penitentiaries.<sup>13</sup>

Throughout the rest of the 19th century the issue of prison reform would continually arise, with reformers hoping to devise new and better ways to rehabilitate and fairly punish criminals. In 1870 the National Congress on Penitentiary and Reformatory Discipline was convened, where the “Declaration of Principles” was created.<sup>14</sup> The declaration put forth many of the principles that would guide the American penal system over the next century. Included within these was the move from punishment as a primary motive in incarceration, and a move towards rehabilitation. This thus led to a change in the way prisoners were treated, creating programs for religious and educational improvement, and a change in sentencing which emphasized the correction of the inmate.<sup>15</sup>

The ideals of rehabilitation persisted throughout the 19th and first half of the twentieth century, though the methods used to pursue them were to alter in some ways. While the correction of the inmate was to remain a primary goal of incarceration over this period, psychological and scientific methods move to the fore as opposed to purely religious or ethics centered methods of treatment. During what is known as the “Progressive Era” (in both penal history and American History as a whole), a new, more scientific approach was adopted to deal with societies problems. A medical model was taken up during this era, treating the prisoner as someone who is suffering from an illness that in turn caused criminality. This concept was then not only a treatment model, but one that attempted to scientifically explain the roots of criminality

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13 Hawkins, Gordon. The Prison: Policy and Practice.

14 Rafter, Nicole and Stanley, Debra. Prisons In America. 7-10

15 Hawkins, Gordon. The Prison: Policy and Practice.

(successful or not). Prison administration hoped to utilize modern science to “fix” the problem they felt prisoners were suffering from, in similar fashion to the modern mental hospital. While the focus still remained on the rehabilitation of criminals, it must be noted that this “scientific” approach often took a rather dark turn, treating many criminals in less than humane ways. During this era the idea of “eugenics” also took hold, which in turn led to the sterilization of many “undesirable” prisoners.<sup>16</sup>

Against the backdrop of revolutionary struggle in the 1960’s, a change in the way we treated prisoners began. As the civil rights struggle raged revolutionaries inside and outside of prison began to draw focus to the inequalities taking place inside of the prison. Revolutionaries like George Jackson, Huey Newton, and Angela Davis among others began to point to the inequalities present in sentencing, treatment, and law enforcement that led to massive discrimination against people of color in the correctional establishment. Throughout this period, Black Muslims and revolutionaries fought for the rights of prisoners, including the ability to freely practice religion in jail, and fought against sentencing policies which at the time were considered racist, such as indeterminate sentencing.<sup>17</sup> In a time of social revolution, it appeared that massive change was going to come in the correctional establishment. Public scrutiny of the prison was high, and criminologists had begun to question the effectiveness of the prison as a means of rehabilitation and punishment. Criticism of the prison during this period reached the point that many in fact began to call for the abolishment of prisons, something which is almost unthinkable today. The most important aspect of this time is the shift of the prison into the

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16 Foucault, Michel. *Madness and Civilization: A History of Insanity In The Age Of Reason*. Random House, Inc. 1965.

17 Rafter, Nicole and Stanley, Debra. *Prisons In America*. ABC-CLIO, 1999:13-15.

spotlight, no longer was the prison and the prisoner was an issue of the margins. Scrutiny was public, and it did not seem unreasonable to expect that major change was soon to come.<sup>18</sup> It was in the mid 1970's that the truly drastic shift in penal philosophy was to take place. Robert Martinson, among others, would declare that "Nothing Works" when attempting to rehabilitate prisoners.<sup>19</sup> Public as well as professional opinion of the time seemed to drastically shift from one concerned with reforming criminals to merely punishing them. Echoing the retributivist punitive practices of the times prior to the enlightenment, criminals were to be treated harshly and afforded no luxuries, including the luxury of a chance to reform.<sup>19</sup>

Throughout the 1970's and especially the 80's and 90's, United States Criminal Justice policy would become suddenly draconian, following the extremely popular calls of politicians, the media, and the voting public to become "Tough on Crime". Staring with Nixon, a federal "War on Drugs" would be declared, but it was not until Ronald Regan that the full extent of this war would be attained.

President Reagan would drastically increase federal involvement and funding in his War on Drugs and in 1986 would pass Anti-Drug Abuse Act of 1986.<sup>20,21,22</sup> Among various measures provided by the law was the introduction of mandatory minimum sentencing, and the now well-known crack/powder cocaine disparity in sentencing. Throughout his tenure media frenzy developed around Crack Cocaine, and through a massive increase in federal funding for fighting drugs, a true war had begun. This war became not only figurative but literal, with a large amount of police budgets dedicated to the purchase of military technologies (along with most of these

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18 Ibid., 14-15.

19 Martinson, Robert. What Works? 1974.

20 Hawkins, Gordon. The Prison: Policy and Practice.1-29. Moberly, Walter. The Ethics of Punishment.

budgetary increases being contingent on the strict enforcement of drug laws by the individual police departments. Again, in 1988 more legislation was passed, the Anti-Drug Abuse Act of 1988.<sup>21</sup> This legislation expanded the death penalty for many drug related crimes, authorized the eviction of anyone convicted or even who has “allowed” drug related activity to take place anywhere near their residence. Further, numerous federal benefits were taken away from anyone convicted of a drug offense, including federal student loans, essentially prohibiting any sort of educational improvement once a convict was released from jail or prison.<sup>22</sup>

Conservatives were not the only political group who advocated this type of legislation, as President Bill Clinton was quick to point out. During his campaign for the presidency, he skipped the New Hampshire primary in order to observe the execution of mentally retarded man in his home state of Arkansas. After observing the execution of a man so disabled that he requested the dessert of his meal saved until after the execution, Clinton triumphantly remarked “I can be nicked a lot, but no one can say I’m soft on crime.”<sup>25</sup> Once elected, Clinton was quick to prove that he could be as punitive as any Republican. He announced that he was in favor of a federal “Three Strikes, you’re out” law, which would eventually find itself made into law in California. Clinton would go on to proudly craft a plethora of reactionary legislation in order to “wrest the crime issue from the Republicans and make it their own.”<sup>26</sup> This would include a federal “One strike, you’re out law” that prevented convicts from using public housing after conviction of a drug crime, and a massive increase in prison and police budgets. He would

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21 Alexander, Michele. *The New Jim Crow*. New York, NY: New Press, 2010.

22 Mauer, Mark. *The Race to Incarcerate*. The New Press, 1999.

23 Beckett, Katherine and Sasson, Theodore. *The Politics of Injustice: Crime and Punishment in America*. SAGE Publications, 2003, 66.

double the prison budget while slashing federal assistance, make it difficult if not impossible for people convicted of drug crimes to achieve in form of federal aid, and imposed a lifetime ban for welfare or food stamps for anyone convicted of a drug felony, including simple possession of marijuana.

While minor changes have been made since this period, much of this legislation remains in place. While the Crack/Powder cocaine disparity has been reduced, a disparity still exists.<sup>24</sup> Federal prison budgets are still massive, as is the prison population. Regardless of the numerous studies that show the poor correlation (some actually display a negative correlation) between crime rates and imprisonment rates, we have continued on the same path, and we have continued to lock up more and more people result.<sup>25</sup> Because of all of these changes, millions are currently trapped in a state between convict and citizen upon release.

Because of the laws that have been passed over the past forty years (including but not limited to those mentioned above), former inmates find themselves disenfranchised, unable to find any sort of financial aid (academic, public housing etc.), and even have difficulties finding menial labor due to the requirement to “check the box” as a felon. Forever marked, countless Americans are brought into a perpetual underclass because of this change in criminal justice policy. In the 1970’s, when it was declared that the prison was not an institution that effectively reformed convicts, the United States Prison population sat at about 280,000. Today it sits at over 2 million.

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24 See “Fair Sentencing Act of 2010 (Public Law 111-220)”

27 Davey, Joseph Dillon. *The Politics of Prison Expansion: Winning Elections by Waging War on Crime*. Westport, CT. Praeger Publishers, 1998. Pgs 25-25.

## CHAPTER III

### DISCOURSE AND THE CRIMINAL

If you were to get most of your information from traditional digital, print and broadcast media, you would not be amiss if you came to the conclusion that the streets are essentially a hell-scape of rapists, murderers, drug kingpins, and rapist-murderer-drug kingpins. You couldn't be blamed if you were to assume that crime (especially violent crime) is on the rise, that drugs are freely distributed (but only in the ghetto), and that plotting, dark (emphasis here) criminals were lurking in every alleyway plotting a new way to overthrow middle America. In a sense, given contemporary discourse and that of the past forty years, this seems to be the only reasonable conclusion to be made. In order to protect ones family, it seems only natural to place evil people behind bars, separate from the decent hardworking American public.

Of course, the world doesn't end up working out that way. Despite the anecdotes, “welfare queens”, Mercedes driving drug dealers, and lazy unemployed gang-bangers are not the norm. In fact, many studies actually indicate that most low level drug dealers are remarkably unsuccessfully, often making less than minimum wage employees (in fact, many deal not in order to exploit the law and make a quick buck, but instead to support their addictions).<sup>28</sup> Unsurprisingly, minorities actually do want most of the basic things that "middle- America"

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28 King, Ryan. The Economics of Drug Selling: A Review of the Research. The Sentencing Project, 2003.  
Hagedorn, J.M. (1994). “Homeboys, Dope Fiends, Legits and New Jacks.” *Criminology*, 32, (2), 197-219. &  
Hagedorn, J.M. (1998)  
Levitt, S.D. & Venkatesh, S.A. (2000). “An Economic Analysis of a Drug-Selling Gang’s Finances.” *The Quarterly Journal of Economics*, Vol. XX, 755-789. Due to the sensitive nature of the data, there was no location given for the city in which this drug gang operated.  
Dubner, Stephen and Levitt, Steven. Why Do Drug Dealers Live With Their Moms? *Los Angeles Times*, 2005.

want. To think otherwise is at best to be woefully uninformed, and at best ideologically racist. People of color do not prefer street violence over peaceful lives, drug addiction and unemployment over health and job opportunities. Death and poverty are not “their culture”.

However, the overwhelming discourse would suggest otherwise. If one is to flip through “wonderful” programs like "COPS", it would appear that it is only natural for "them" to act that way, and that there is and has never been another alternative to crime other than stiff criminal penalties. Was there a time when crime was looked at more subtly? Not as a force of evil, but instead as a complex process involving diverse factors such as class or ethnicity? In a sense, we can say that it was. In the following chapter I hope to outline the change in discourse over the past 60 years and the way in which this change in ideology (and the portrayal of individuals) has led to a different definition of "the criminal", and how this changing definition has led to the backwards, almost medieval penal policy of today.

### **The optimism of postwar penology (Beginnings to the 1960's)**

While we often employ a narrative of progress when talking about the development of American political structures, when it comes to the history of punishment there seems to have been a drastic shift in the other direction. While risking oversimplifying the history that came prior to the end of WWII, as stated previously it can generally be said that an optimistic ideal pervaded American penology. In varying forms American criminal justice was focused on deterrence and rehabilitation of criminals rather than strict punishment of offenders. While this came in various forms, essentially it was still believed that while a criminal had



committed an immoral act, it was possible for prison administrators, with the cooperation of the inmate himself, would through work and penance be able to reform the evils present in the convict's behavior.<sup>29</sup>

By the post-war period, this belief in the power of prisons to make a transformation in inmates still pervaded, though obviously slightly altered than in its original incarnation. Before going into too much detail, it is necessary to note who the "prisoner" discourse of the time was typically referencing. In the year 1950, the majority of criminals (69%) were of Caucasian origin, with roughly 31% of other, non-white origin. While minorities, especially ADP were over-represented by their percentage in the population, the huge demographic shift towards a minority prison population which would come in the 1980's had obviously not taken place yet. Because of this, typical media representations of prisoners throughout this period focused primarily on white, as opposed to portrays of ADP or other minorities.<sup>30</sup>

For the sake of brevity, I feel that it is somewhat unnecessary to discuss again theories and discourse surrounding crime up until the mid-twentieth century. While the theories surrounding inmates changed in focus, the general belief was that a criminal was someone who erred (for a variety of reasons), and though he has committed a crime, he was inherently redeemable if given the proper treatment. Over time, this treatment could mean anything from spiritual advice, occupational training or work, medical/psychological assistance, among many others. However the central idea from the creation of the penitentiary was that a

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29 De Beaumont, Gustave and De Tocqueville, Alexis. *On The Penitentiary System In The United States And Its Application In France*.

30 Sloop, John. *The Culture of Prison: Discourse, Prisoners, and Punishment*. University of Alabama Press, 2006.

criminal was someone who through some sort of assistance could eventually become a productive member of society. Further, those who were typically discussed as “redeemable” were typically white and not prisoners of color.<sup>31</sup>

Following the end of the Second World War, the idea of the typical prisoner remained one who is essentially “altruistic”, “redeemable”, and of course white. In the 1950’s and early 1960’s, prisoners were depicted as good people who had erred, and were willing to put in the time and effort to repay their debts to society. Stories of prisoners who were willing to take part in medical experiments for the benefit of others, were remorseful yet thankful for the opportunity to reform, or had achieved a (Christian) spiritual awakening were common. For instance, in an interview a prison psychologist of the time is explained the motives behind prisoners taking part in medical experiments as the result of a “social conscience that many of them do not realize they have. Selfish motives play a secondary role. They welcome the chance to balance some of the harm they have done.”<sup>32</sup> In representations such as these it is emphasized that not only do convicts feel guilty for their crimes, but that they are actually willing to take action in order to balance out the damages they have done to society.

In popular media representations, often (though obviously not always) prisoners were portrayed not as inherently bad people, but merely citizens who had made a mistake. Through time and repentance, a change could be made. Even prison riots were not necessarily blamed on the actions of prisoners, but instead on the conditions of the prison itself. When a large riot

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31 Sloop, John. *The Cultural Prison: Discourse, Prisoners, and Punishment*.

32 Sloop, John. *The Cultural Prison: Discourse, Prisoners, and Punishment*.

occurred at Michigan State Penitentiary, news reports of the time did not focus on the evils of the criminals, but instead the problems inherent in the prison itself which led to the riot in the first place. Even though the prisoners took part in violent acts (actually taking a guard hostage), the convict leader Earl Ward was represented as a rational actor, and was treated as such by the prison officials as well as the media.<sup>33</sup> Thus we see that for the most part during the period the media and members of the criminological establishment looked at and represented prisoners as human beings who deserved decent treatment, not as violent irrational animals.<sup>33</sup>

However, it would be incorrect to say that prisoners throughout this period were all depicted in this way. The amount of discussion around black prisoners was a lot less widespread than it is today, due to a variety of factors. However, when discussed blacks were most often depicted as wild, irrational, and violent animals. They were not included in the stories of redemption, but believed to be outside of the dominant morality that white offenders had merely temporarily strayed from. Particularly, ADP were represented in exceedingly bizarre ways in order to differentiate them from the mainstream of American convicts. A common theme was the hyper- sexuality of the black inmate, particularly his nature as a “homosexual predator” The typical narrative depicted the “normal”, salvageable inmate being preyed upon by the violent “homosexual” rapist black man. The sexually violent nature of the black inmate would evolve over time and slowly become a dominant theme in prison discourse. It is interesting to note this development because it seems to be central to the future portrayals of minority prisoners in later discourse. Although not the main focal point of prisoner representations, it is interesting

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33 Sloop, John. *The Cultural Prison: Discourse, Prisoners, and Punishment*.

to see that when minority prisoners were represented, they were typically presented in such a negative light.

Beginning in the mid-1960's with the civil rights movement, and more specifically the radical black prison movement, a discursive shift towards the criminal as a black man would take place, regardless of the actual demographic makeup of the prison population. With only a small change in the overall population of people of color in the penal system from the early to late 1960's, it is simply impossible to ascribe the change of focus on white to black inmates merely from their increasing numbers in the prison population. Indeed, during this time there was almost no real shift in the percentage of minorities in prison, going from roughly 35% in 1965 to around 39% by the end of the 1960's. Indeed, I would suggest that it is not a result of actual changes in the makeup of minority prison populations, but merely a discursive shift in response of the media, state, and voting public to the increasingly high profile nature of civil rights structures throughout the 1960's (but particularly towards the end of the 1960's with the Black Panther and various other radical minority movements) that led to this change in the way experts and the public perceived and discussed the prisoner.

Instead, it seems that a more or less concerted effort from both sides of the political spectrum led to a change in the way the American public viewed prisoners and criminality. As noted above, throughout the 1960's American prisoners began fighting for rights they rightly felt were being violated. Indeterminate sentences, racial biases, as well as general mistreatment of people of color in American prisons was rife throughout this period, and naturally radical

activists and more generally the left began to react, bringing many of these issues all the way to the Supreme Court. Accounts of mistreatment and of the radical prison movement made its way to the American mainstream, with the publication of books by thinkers like Angela Davis and George Jackson as well as the high profile news coverage of radical protests throughout this period.

While major gains were made, a reaction was brewing that led to a discursive shift regarding the prisoner, inevitably leading to the reactionary and racist policies of today. Like the early 1960's and before, black prisoners were treated as irredeemable and irrational. However as new rights were granted to prisoners, the far right began to utilize a discourse of reaction that resonated with an American public which had grown afraid of "angry black men" like George Jackson and Huey Newton. Thus, by the 1970's media and political discussions had turned on the idea of rehabilitating prisoners. Staring in the 1970's we see a drastic shift away from discussions of criminals as white and worthy of being rehabilitated to black and worthless. Even when using essentially colorblind language, one need only to study academic journals as well as popular media sources to see that there was some sort of shift in the understanding of who prisoners were, and how we should treat them. Thus, academic as well as public opinion moved away from rehabilitation and towards the idea that "Nothing Works". This change in discourse saw itself instantiated in the tough on crime movement of the past 40 years.

The contrast of the representations from the 1970's with the 1950's is startling. The positive aura around rehabilitation has completely vanished, and even when discussing essentially the same events, we see a drastic shift in the way that these stories are reported. A good example

is the change in the way prison violence was represented throughout this period. Instead of looking for the causes and potential corrective course for such violence, criminals are presented as savages, and violence as an inherent trait of the criminal. For instance, when Aric Press, a writer for Newsweek discussed the possibility of prison violence and riots, he noted “every day, somewhere, an inmate beats or is beaten, rapes or is raped, stabs or is stabbed.”<sup>34</sup> The prisoner is now depicted as a perpetrator of continual, animalistic violence, and this violence is not something which the establishment should seek to correct, but instead is inherent to the nature of the criminal. Because of the sensationalist nature of crime reporting, not only is this type of violence reported as taking place in the penitentiary, but even in low level, such as in juvenile detention centers. Again, the narratives typically focus on the “predatory criminal” and, if there is any inmate who is in some way redeemable, they are typically presented as the victim of some sort of violence at the hands of other convicts.<sup>35</sup>

What is even more bizarre is the shift during this time towards popular representations of crime outside of traditional news sources. While the “crime procedural” is a format that has been around for a while, by the late 20th century the depiction of criminals eventually shifted the late twentieth century depictions of criminals began to skew in the racial direction, as well as in a more sensationalized and violent one. Shows like COP’s, which are presented as “Reality” television, they tend to misrepresent not only the demographics of crime (in fact, at a certain point COPS began to over-represented the percentage of white criminals), but most importantly misrepresent the nature and types of crimes that are most common in society.

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34 Press, Aric et al., “When Will”, 68.

35 Sloop, John. The Cultural Prison: Discourse, Prisoners, and Punishment. 142-145

Obviously, as is the nature of television programs, shows like COPS and other popular programs of the kind need to represent the most interesting stories in order to stay on the air and attract advertisers, regardless of whether or not they accurately represent crime. Because of this and the extreme popularity of shows such as these, it is easy to come to an extremely flawed conclusion about the nature and rate of crime in the United States merely by watching programs which often claim to be accurately representing “crime on the streets”. In a somewhat bizarre twist, shows such as Dragnet now seem to be more accurate in regards to the nature of crime than many “Reality programs”.

What did this turn then look like? As the focus shifted from the white to the minority prisoner (especially the black prisoner), we see the call for a punishment -centered focus of incarceration, as opposed to one focused on rehabilitation as stated above. But the discussion does not limit itself to academic discourse concerning public policy. The shift can even be seen in popular television programs, print and television news, and maybe most importantly in political talking points. As our image of the criminal was transformed, so too was our focus on crime.

By shifting our stance to one which was “tough on crime”, we finally begin to see the passage of the sort of draconian legislation that are central to the carceral state. This sort of dialogue, with its simplistic understanding of crime and criminals seems to be based not on the enlightened criminal philosophies of the 18th century, but seems to actually have more in common with the pre-modern ideas of crime and punishment. Similar to the pre-modern “retributivist” policies of the time, we no longer focus on the humanity of the convict, but

rather their inhumanity as a cause of crime, which itself is grounds for strict retribution at the hands of the state. By dehumanizing the criminal, politicians and voters seemed to embark on an arms race to prove who could be more stringent in sentencing laws. By emphasizing the irrational, evil, and animalistic nature of criminals (and appealing somewhat subtly to race), policies were passed which quickly led to the disparities of today.



## **CHAPTER IV**

### **POLITICIANS AND THE MEDIA AS CULPRITS?**

More evidence would be useful; however the nature of a short essay prevents me from providing much more. However, one doesn't have to dig too deep to see examples of this sort of discourse in their everyday life. Television is a particularly sad example of this; from COPS to "talking heads" (on both sides of the aisle); historically broadcast media has had a rather complicated relationship with the representation of crime. However, print and other forms of media do not fare much better. Further, one merely has to look at the approval ratings of congress (which sits at 13% as of the writing of this paper) in order to see a general distrust in the statements and actions of members of congress (and really, a lack of trust in the government in general).

Regardless of an individual's particular political orientation, it is widely perceived that politicians distort the facts for their own advantage, and that the media is complicit in this fraud.

This is certainly not the ideal situation for a nation predicated on the notions of a "free press" and "representative democracy". However, regardless of the general distrust in politicians and the media, it appears that these groups held and still seem to hold a great deal of sway when it comes to the formation of public opinion. While generally skeptical, public opinion as a whole can be swayed by mere sound bites, something which could never have been imagined at the founding of the United States. Because of this, voters (especially "independent voters") can be swayed by such minor things as "temperature changes", and as a result of this non-critical decision making process can be quite easily convinced to take rather extreme and simplistic stances on some of

the most complicated socio-political issues, crime and punishment being just one of them.<sup>36</sup>

The implications of this sort of rhetoric are immense, especially in regards to criminal policy. As traced above, there is a rather loose correlation (if not a negative one) between crime and imprisonment rates, and yet politicians, members of the media, and people in the private sector continue to advocate the draconian policies which seemed to be going out of fashion as much as 50 years ago.<sup>37</sup> [It must be noted that both public opinion as well as political opinion has changed, at least on the surface. See Attorney General Eric Holder's speech to the ABA for proof of at least a rhetorical change]<sup>38</sup>

It seems obvious then that those who control the discourse are to blame for the perpetuation of the ideology of mass-imprisonment. In fact, this claim is pretty common among those who study media and political discourse, especially when it comes to crime. The connection of the media and crime is extremely old, with claims being made for the media's cause AND over-representation and misrepresentation of crime. In contemporary debate it is common to see television programs blamed for influencing and causing violence in the same breath as it is blamed for misrepresenting the extent of crime. Apparently the irony of sensationalizing the sensationalization is lost on pundits.<sup>39</sup>

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36 Hamilton, Lawrence. *Blowin' in the Wind: Short-Term Weather and Belief in Anthropogenic Climate Change*. Writing, Climate, and Society, 2013.

37 Davey, Joseph Dillon. *The Politics of Prison Expansion: Winning Elections by Waging War on Crime*. Westport, CT. Praeger Publishers, 1998.

Barker, Vanessa. *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders*.

38 See <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html> for the full text of Attorney General Holder's speech.

39 Brown, Sheila. *Crime and Law In Media Culture*. Philadelphia, PA. Open University Press, 2003.

An easy target for blame is the politician. Politicians have a long history of exploiting crises in order to win votes and pass legislation that they feel would otherwise not be able to get enacted. The issue of crime is certainly no exception to this rule. Starting with President Nixon, crime became a central issue to countless campaigns, often being the main issue to separate essentially similar candidates.<sup>40</sup>

Not only on the federal, but also at the state and local level, crime became an extremely important issue for political campaigns. Particularly at the state level, where much of these policies were enacted, we see a huge push by many politicians for increased punitiveness throughout the period, starting roughly in the 1970's. In fact, many of these politicians would essentially build their careers off of the issue of crime. What is interesting is that, while often portrayed as a single, monolithic structure, the prison apparatus is actually a rather loosely structured collection spread across the fifty states, operating according to many general rules (such as federal drug laws), but according to varying degrees of funding and focus on punitiveness. State by state we see different systems that seem to correspond with the structure of each individual state government. For example, states with direct democracy like California often took radical steps to deal with crime because of the nature of their political system. By avoiding the debate involved in representative democracy, we see these states adopting radical policies like "Three Strikes, You're Out". In contrast, New York state would adopt a more isolated, elite, and managerial approach to crime, which again we can see instantiated in many of their criminal policies, to this day. Plenty of research shows the way in which merely the type of state political structure is able to influence the creation of the penal apparatus.<sup>41</sup>

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40 Barker, Vanessa. *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes*.

41 Barker, Vanessa. *The Politics of Imprisonment*.

Further, research has been done to study the importance of crime in campaigns, especially focusing on similar states (often geographical “neighbors”) and the way in which the focus on these policies led to the election of certain candidates. Further, by focusing on extremely similar states (like North and South Dakota) which varied not in crime rates but merely in the type of penal ideology represented at the executive and legislative level, the association between political rhetoric, crime rates, and incarceration rates were able to be studied. Interestingly, as mentioned above, it seems that the rhetoric is more of a cause of prison building and mass incarceration than the actual crime rate, fulfilling the well-known adage “if you build them, you will fill them”.<sup>42</sup>

For an example of this, we can look at a study done on the states of North and South Carolina. Looking at the year 1985, we see extreme socio-economic, political, and demographic similarities. Even more, they have almost identical imprisonment and crime rates at this time. The governor of South Carolina at this time, Carroll Campbell, built much of his career on the perception that he was “tough on crime”. Tellingly, he began his career in the 1970’s by serving as the spokesman for the “Citizens to Prevent Busing Committee”, a group which attempted to halt school desegregation in the state.<sup>43</sup> For the next four years after 1985, he would begin to heighten the focus of his administration on things like drug use, by increasing punitiveness and focusing large amounts of state money on the prosecution of drug users as well as dealers. Important for the study however is that over the four year period starting in 1985, he increased the percentage of the state’s prison population by over forty two percent.<sup>44</sup>

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42 Davey, Joseph Dillon. *The Politics of Prison Expansion: Winning Elections by Waging War on Crime*. Westport, CT. Praeger Publishers, 1998.

43 Ibid., 47-73

44 Ibid., 47-73

Compared to South Carolina over this time period, the prison population of North Carolina led by Governor James G. Martin not only did not increase, it actually decreased. In 1985 the state stood at 254 inmates per 100,000 members of the population. By the end of this period, however, it had decreased to 250 per 100,000 citizens. How is this possible? Could it be the result of differing political parties? No. In fact, both were members of the Republican party, and both would likely describe themselves as conservatives. While during his tenure he did increase the amount of funding for prisons, he actually merely allowed for an alleviation of prison overcrowding, essentially improving the conditions for prisoners.<sup>45</sup>

How can we then explain the fact that two members of the same party would take such drastically different approaches to crime? Traditional narratives of the “prison-industrial-complex” like to point to a “conservative conspiracy” which in turn led to mass incarceration, but I think that this idea is suspect. In fact, as shown above, often some of the most level headed leaders would be considered to be “conservative”. Instead, I argue that it is through political opportunism that we see much of these policies enacted during the early stages of the move to mass incarceration. Regardless of the facts, we see many governors like Campbell playing the role of the demagogue in order to win votes. Interestingly, a close friend and adviser for Governor Campbell, Lee Atwater, is one of the political strategists most well-known for using fear as a way to motivate voters, such as in the infamous “Willie Horton Ad”, during the George H.W. Bush campaign.<sup>46</sup>

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45 Davey, Joseph Dillon. *The Politics of Prison Expansion: Winning Elections by Waging War on Crime*. Westport, CT. Praeger Publishers, 1998.

46 Davey, Joseph Dillon. *The Politics of Prison Expansion*.

Troublingly, there is much more data to support the conclusion that politicians have merely manipulated public fears in order to win elections, although the scope of this short essay prohibits a deeper discussion of this connection. However, we can still see that we cannot link political rhetoric as a response to the real conditions of crime. Instead, what we see is that certain politicians took advantage of and created a wide-spread public fear of drugs, minorities, and crime, often with no true connection with reality. By taking part in high profile publicity stunts (such as suggesting public drug tests of political opponents), politicians were able to manipulate innate fears in order to win votes. What we learn by analyzing political rhetoric of the time is that we cannot merely point our finger at the Right. It seems that the American political left was not innocent, but merely late to the game in exploiting the crime issue.<sup>47</sup>

However, while politicians are certainly guilty of exploiting the issue of crime for their personal advantage, they do not act alone. A discussion of the irresponsible nature of crime reporting seems almost trite at this point. It is well established that the media vastly over-represents certain types of crime, such a violent crime, while underrepresenting the extent of small time criminal activity like petty theft. Because of this, citizens are provided with a skewed sense of the true nature of crime, creating a fear of a type and amount of crime which simply isn't there. A great example of media and political rhetoric distorting and then drastically changing the views of the American public is on the issue of drugs. While in 1985, polling indicated that only about 4-6 percent of Americans thought that drugs were the "number one issue", by 1989 public opinion had shifted to 64 percent- a shocking jump which seemed to correspond in no way to reality.<sup>48</sup>

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47 Alexander, Michele. *The New Jim Crow*.

48 Goode, Erich and Ben-Yehuda, Nachman. *Moral Panics: The Social Construction of Deviance*. Wiley-Blackwell, 1994.

Instead, through dramatic representations of drugs (especially in connection with the “crack epidemic”, the phrase itself being a loaded term), we see this sudden shift in public consciousness. Without regard for the actual conditions of crime and drug use, loaded and sensational rhetoric was thrown at merely as a way to increase viewer and readership. Misrepresentation of crime doesn’t limit itself to the issue of drugs, nor is it limited to the moral panics of the 1980’s. It is an ongoing issue, as pundits like Nancy Grace continue to forge careers off of the grisly details of murders and disasters. By drawing attention to their shows and stories through the use of graphic detail and sensationalism, we are presented with the “harsh realities” of the world, which really amount to the statistically insignificant, yet macabre and interesting. By presenting crime in this light, even the most educated among us has trouble separating the truth from fiction. It is hard to have any sympathy with a convict when your understanding of the average criminal comes from violent television programs and outlandish news.<sup>49,50</sup>

Accounts that don’t include all of these factors to me seem lacking in explanatory power. Politicians certainly do oversimplify issues and exploit the fears of their constituents for political gain. Members of the media also most definitely profit off of these same fears, presenting caricatures of criminals in order to boost ratings and expand profit margins. But it seems that there is something existing just below the surface of majority discourse that allows for this exploitation to happen in the first place. As a business venture, would it make sense for a media outlet to present these images if they were not expected to be received favorably? Would

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49 Brown, Sheila. *Crime and Law In Media Culture*. Philadelphia, PA. Open University Press, 2003.  
Silverman, John. *Crime, Policy and the Media: The Shaping of Criminal Justice 1989-2010*. New York, NY. Routledge Press, 2012.  
50 Carrabine, Eamonn. *Crime, Culture And The Media*. Cambridge, UK. Polity Press, 2008.

politicians continue to distort facts if there wasn't an underlying feeling in the districts they represent?

I want to suggest then that, while not necessarily the cause, an inability or unwillingness to think critically about issues of race and class lies at the heart of the issue of mass- incarceration. While politicians and members of the media should certainly be held accountable for their acts of mystification, to place the blame squarely on them is to not only unfair, but misunderstands the way (or at least the ideal way) that representative democracy and the (ideal) market works. It is assumed that, as a voting public, individuals are supposed to take both the time and effort to thoroughly educate themselves on topics concerning the running of their country. While news outlets broadly misconstrue facts to support political opinion, it must be questioned why individuals seek out figures like Limbaugh and Maddow in the first place. Is it in an attempt to remain or become engaged in the public sphere of debate, or in order to become indoctrinated in the latest talking points of their respective political camp? I suggest the latter. Even if not consciously, it appears that people tend to gravitate to sources that validate their ideological viewpoint. If you trust it, the psychological research is there to support the theory of “confirmation bias”. But outside of this, a simple analysis of ideology and class interests can help explain this phenomenon. By understanding the way in which discourse has deteriorated into a non-critical, one-dimensional discussion, we can begin to understand how this sort of phenomenon can be perpetuated in the “colorblind” era.

I maintain that at its core racism is the result of an internalized material and ideological structure of privilege. One does not necessarily have to hate in order to be a racist. Should the term itself



be changed with this new understanding of race as institutional as well as ideological? Possibly, however I will choose to stick to the framework provided by thinkers inside the community of scholars who better understand the issues of ADP and people of color as a whole. However, by understand the institutional aspect of racism, we are then able to better articulate a materialist understanding of both the process of oppression itself, and the reproduction of particular ideologies and their material counterparts (political action, discrimination in business etc.)<sup>51,52</sup>

Through an understanding of racism and oppression as institutional, we are forced to analyze the way that structures and ideologies perpetuate themselves. Drawing from the Critical Legal tradition, I am suggesting that this sort of understanding helps us to be better understand how these sort of ideologies and practices perpetuate themselves, regardless of the “end of racism”. Simply by understanding the ideas inherent in the foundation of this country, and then matching them with our material realities, we are able to see many of the contradictions inherent in discourse and society.

So, considered differently, we must use the ideology of the Enlightenment to explain the institutions it created itself. While widely invalidated in the present day, Enlightenment theories of consumption and political action are still ever-present in rhetoric. It is assumed that each individual makes rational choices in the world according to their best interest. Ideas such as conspicuous consumption aside, in general this still operates as a good explanation for much of

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51 Bell, Derrick. Racial Realism. The Connecticut Law Review, 1992. Delgado, Richard. Critical Race Theory: An Introduction. NYU Press, 2012.

52 Crenshaw, Kimberle et. al. Critical Race Theory: The Key Writings That Formed The Movement. New York, NY.

the actions taken by the consumer/electorate. Consider a recent campaign in the fictional state of “Middle America”. Running in the general election are two candidates: Homer Simpson(R) and Eric Cartman(D). Kenny Loggins, who is considering going to the polls for the first time is stumped. As a small business owner, he very interested in a lowering of the income tax, which he sees as advantageous for the growth of his economic interests. However, an avid consumer of marijuana, he is taken in by the pro-marijuana rhetoric of candidate Cartman. How is Kenny Loggins to escape this problem of choice, a veritable “danger zone”? According to the rational choice theory which sits at the heart of our political and economic system, Kenny Loggins would consider his options, undergo a critical analysis and educate himself on these issues, and whichever of the two candidates seemed to most advance his interests(and ideally the society at large), he would make his choice accordingly.

This seems to be obvious, and of course it is; it is the basis of our economic and political system. But how does this explain the more muddled issue of media and political misrepresentation? I want to suggest that, as dictated by the free-market and whatever its political equivalent is, media figures as well as politicians are forced by the nature of their position to make these sorts of claims in the absence of any sort of statute preventing it. By comparing this type of understanding with our explanation of political and media abuses of rhetoric, we begin to see why this sort of process would perpetuate itself.

Certainly, politicians exploit moral panics in order to gain political advantage. Morally, these politicians should be held accountable. However, in a society based on the ideals of rational self-interest, we must question why we are surprised that this sort of action would take place. If

through study politicians and their advisors determine that this sort of rhetoric would be advantageous for their election to office, and further if politicians are themselves trapped within this rhetorical oversimplification (as everyone who lives within a society determined by one-dimensional discourse), can another course of action be expected?

The press is an even greater example of this process. First and foremost, the “press” is made up of businesses. While there are thousands of independent bloggers, mainstream media is firstly a business, and has profit, not accuracy as its primary objective. As a result, like politicians, it is not hard to see why an understanding of the success of sensational stories would lead to anything more than the further production of these type of articles and programs. If the public desires sensational stories of crime, sensational stories of crime they shall get. This is not isolated to the issue of criminality; natural disasters, plane crashes, and scandal seem to take up as much air time and print as any critical analysis. For whatever reason, the public desires this sort of news, and while it would certainly be noble for a particular news agency to take a stand and only report the “truth” (which inevitably would take the form of some particular political ideology), it would merely take one competitor to maintain sensational stories to steal ratings and readership. Just like in politics, competition seems to be the norm, and few options outside of the existing ones appear available.

What seems even more bizarre however is the almost universal knowledge of this sort of misrepresentation at the hands of politicians and the press. As mentioned above, it seems to be a rather unspoken rule that both of these groups are not to be trusted. However, even in spectacularly low-brow movies like “Anchorman 2” we see references to the sensationalism

inherent in crime reporting. It seems tragically ironic that countless must have left the theaters to go home and catch the latest “O’Reilly Factor”.

## CHAPTER V

### THE MANICHEAN NATURE OF DISCOURSE

What then continues to drive the consumption of un-credible media and the election of untrustworthy politicians? At the core of this, I believe it is for the perpetuation of a personal ideology, and more generally a lack of empathy. But how can this be explained? I believe that there is a breakdown between “academic discourse” (which in no way should be privileged to common talk) and the general public ideology. A religious example can help explain my distinction. One of the most widely known Christian heresies, Manichaeism, can be generalized as a belief in an eternal battle between good and evil, between a spiritual world of light and a material world of darkness. While in large part banished centuries ago, I contend that this dualistic view of the world lingers on, not in the original form of religion, but instead in the dualistic socio-political world view which permeates most contemporary political discourse. With few exceptions, it is hard to find a political discussion which does not make appeals to absolutes, depict the other as on the “wrong side of history”, or generally demonize the actions of others as “evil”, “dark”, “bad”, or some sort of variation of this which contrasts the other with the “goodness” of the speaker.<sup>53</sup>

Religious belief aside, this conception of the world is mere foolishness. The world is not black and white, and with each passing day it becomes increasingly complex. To try to define the world as made up of two opposing and mutually exclusive camps is at best questionable.

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53 Sartre, Jean-Paul. *Anti-Semite and Jew: An Exploration of the Etiology of Hate*. Schocken, 1995

of pure evil, but instead an almost endless number of possible explanations (one of which could in fact be “evil” as such). By assigning these sorts of dichotomies to speech and writing, critical discourse ends; the type of discussion which is essential for any sort of democracy in the classical liberal sense.

Certainly however, this sort of talk has been around for centuries, millennia even. While too much to discuss in this paper, the state and the world were set up in drastically different ways than they are currently. Without attempting to be revisionist or apologetic, it was simply a different world, and political discourse was oriented as such. Because of these complications I am choosing to discuss the present (and recent past), as opposed to the entire history. (For further explanation of this idea of shifting political discourse, and more particularly a shift in the structure of political discourse, see “The Structural Transformation of the Public Sphere” by Jurgen Habermas.)<sup>54</sup>

What then does this sort of “Manichean dualism” achieve, or more, what does it destroy? It is here that we return to the discussion of the criminal. As stated above, it can be noted merely by studying popular and academic discourse that we have not had a constant view on the nature of the criminal. However, what I have found most interesting about my study is that around the late 1960’s and early 1970’s, a drastic shift in our discussions took place. It can be argued that we were much more critical of the way we talked about and treated prisoners over fifty years ago than we are even now. I argue then that it is through a reaction to changing social conditions, and

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<sup>54</sup> Habermas, Jurgen. *The Transformation of the Public Sphere*. The MIT Press, 1991.

a reinterpretation of what it means to be a criminal that led to this new idea of the convict. In general it could be stated that the discourse shifted from “Good/Temporarily-out-of-favor” to “Good/Evil”. The ideology of racism was reinterpreted, from a more explicitly racist dialogue which labeled all people of color as “evil” to a more veiled, yet equally damaging representation as a criminal. To be of color is now almost synonymous with crime; the mere act of poverty, of being poorly educated, and of merely being born into a particular cultural group immediately identifies the person as subversive.

It is the nature of public consciousness, and further the nature of the mass-information culture which perpetuates this sort of ideology. Popular news outlets promote a certain ideology, and while varying from “left” to “right”, generally stick within a certain framework. To vary from this ideological framework is to prove subversive as well, whether on left or right. Conservative and liberal thinkers who propose ideas which run counter to traditional ideological orientations are labeled in similarly oversimplified ways. Breitbart is a “hate-monger”; Olberman is a “socialist”. In similar fashion, by utilizing particular rhetoric, discourse outside of the approved format is prohibited; to fall outside of it is not only discrediting but career suicide.

Political dialogue then has lost almost all of its power for critical discussion, not only limited to the issue of crime and punishment. An ideological “conspiracy” does not even need to be proposed to help explain this trend; again it seems to be merely the nature of these institutions to perpetuate these simplistic ideas to a public that is unwilling or unable to deal with these extremely complex issues. What we are left with then is a fragmented ideological picture. On one hand, main-stream news outlets propose different, yet essentially the same ideologies

constantly. In order to explore ideas outside of these media requires a trek beyond traditional media outlets, but these sources again are marked as “extremist”, immediately discrediting any ideas that are not contained within the narrative structure of political dialogue. What we are left with then is a dialogue which, while politically heated, is arguing over seemingly huge, yet essentially small issues. When it comes to arguments of criminal justice, the discussion centers around shifts in sentencing, not a change in the way we deal with criminals as a whole. An inability to analyze our own structure of discourse leads to a fault in our understanding of our society, and with that a stagnation that threatens the foundations of western democracy.

To sum up then, this “Manichean” worldview prevents us from entering into any serious discussion of the issues of crime. Due to the one-dimensional nature of contemporary discourse, we are unable to discuss alternatives to current methods of incarceration, and are even further discouraged to even want to consider these methods because of the assumed nature of criminals. By painting criminals as evil, and by avoiding the complex factors that go into the creation of the criminal, we are able to avoid a thorough examination of our society, and are then unable to deal with our complex socio-political realities.<sup>55</sup> Regardless of the information discussing the effectiveness of prison, no matter the studies on the makeup of the criminal population or the effectiveness of these sorts of policing procedures, we are unable to change our behavior because of an inherent problem with the way we discuss these issues, and the fundamental way we understand the world around us.

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<sup>55</sup> Marcuse, Herbert. *One dimensional Man: Studies In The Ideologies Of Advanced Industrial Society*. Boston, MA. Beacon Press, 1964.



## CHAPTER VI

### A RESTATEMENT OF THE PROBLEM: A FAILURE OF EMPATHY

If it takes such a simple analysis to explain such diverse socio-political phenomenon, would there be an equally simple explanation for the initial creation of these sort s of oppressive practices? I would argue that the failure of the democratic institution is through a failure in empathy; namely the result of an inability for each subject to identify his fellow man as not a nameless subject, but as a living, striving individual. Instead of considering the diverse factors that make up the daily struggles of each individual's life, we choose to discuss others in the simplistic way mentioned earlier.

Related to the concept of “the sociological imagination”, this sort of critical empathy challenges the individual to imagine himself not only in the general socio-political context, but also in the particular context of the individual citizen.<sup>56</sup> This sort of critical empathy allows one to look past the sloppily defined dichotomies of popular discourse, and to attempt to understand the everyday realities of others. More colloquially, by taking a critically empathic perspective, one is able to “walk a mile in someone else's shoes”. Doing this, one is able to understand the other not as a faceless subject, but instead a real person who goes through complex issues in similar ways to themselves.

A critically empathic perspective is anathema then to our current prevailing “Manichean” consciousness. If Manichaeism leaves us trapped in a one-dimensional sphere of discourse, a

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<sup>56</sup> Mills, C. Wright. *The Sociological Imagination*. Oxford University Press, 1959.

critical perspective allows an understanding of a more diverse array of opinion and forms of life. To practice this, we must first recognize the nature of our own subjectivity. This does not force us then into a “relativist” quietude; it instead is a call to action. By having the willingness and ability to consider not only ones own being, but the being of another, one is able to consider the vast array of perspectives when attempting to come to a conclusion, something which should ideally be central to a functioning democracy. Instead of a lazy subject -object relationship, one would be obligated to reject the type of contemporary rhetoric and demagoguery which seems to have become so central to the present political system. It would imply a great deal of changes, especially in our practice of criminal justice, but more generally in the functioning of the public sphere and our political system as a whole.

I will then return to the original topic in order to highlight the way this sort of understanding would function in everyday life. By adopting a critical, empathetic perspective of the world, the citizen is better able to gain a more accurate, while still subjective understanding of the varying contexts that make up the daily lives of the countless citizens around them. By analyzing discourse (by looking at the institutions and the way we speak about criminals), the individual is able to gain a clearer, less simplistic understanding of crime and criminals. Instead of being limited to a one dimensional, “Manichean” understanding of the criminal, the overwhelming greyness of the world is revealed. By having knowledge of the complexity of these issues, drastic decisions (such as the creation of the mass carceral state) would if not prevented, be at least mitigated in some sense. This sort of critical perspective of our politicians and media members would require a more careful analysis of the issues, something which is central to the functioning

of any democracy. Further, by engaging in an empathetic understanding of the other, it may be possible to come to a third way, one which is not defined by “leftist” or “rightist” ideology, but instead one which is focused on a mutual willingness to discuss and lead to the greatest wellbeing of the citizenry.

Finally then, we can acknowledge the usefulness of this sort of perspective for individuals across the political perspective. This does not advocate a certain ideology, unless we consider a critical view of society as a particular ideology. I would contend that it is not; it is instead merely an methodology. A critically empathic perspective is advantageous to both left and right, and more likely it would lead to a blurring of the lines between both political ideologies. To reject the objectification of the human person is to reject many of the central principles of the current political system, but not to reject the ideal founding beliefs of the Enlightenment and this country. This sort of idea then obligates both conservative and liberal to challenge their own beliefs, and most likely would require destruction or at least major restructuring of their core principles. While seemingly radical, political realities seem to point to a dismal, failing democracy, or a radical change in the way we think about the democratic process itself. Without a change in our understanding, we stand to lose our place as the bearer of the torch of democracy. As an institution, representative democracy is in crisis the world over. From Europe to the fledgling democracies of the Arab Spring, these problems are the ever-present question mark on the philosophy of democracy. If we truly still believe that democracy is the greatest system of government, then we must reevaluate the way we think, talk, vote, and operate before it is too late.

## **CHAPTER VII**

### **THE NEED FOR AN ACTIVE CRITICAL THEORY**

It is easy for someone of a certain political persuasion to use this sort of analysis to break down and find the contradictions inherent in the political discourse surrounding various issues.

Because of this, a problem arises. While I have applied a critical theory of race and a study of political discourse as a way to help highlight the problems within our current penal system, it could be argued that a similar approach could be used to argue for issues that fall on the opposite side of the political spectrum.

In fact, I would say the purpose (or at least the tertiary purpose) of this paper is to advocate such an approach. The prison and mass-incarceration are simply an example of what I consider to be an over-simplification or even mystification of the “real events”, and by using this sort of technique I hoped to at least bring to the front the ideological opposite of what is typically portrayed. Because of the way discourse operates in the public sphere, certain ideas and narratives are privileged, “tough on crime” merely being one of them.

It is through this critical analysis of society that I see the future of philosophy. While academics may have embraced many of the ideas of post-modernity, they have done very little to bring these ideas into the mainstream. As a result, we live in a world of glaring contradiction. As philosophy students sit around reading Derrida, Foucault and Wittgenstein, they eat up the reckless rhetoric of politicians and talking-heads, regardless of their political persuasion. While

Post-modern academics have rejected “meta-narratives” in their theory, we continue to see political action oriented around grand narratives of progress. While philosophers for the past century have had a stricter focus on the study of concepts like inter-subjectivity and the ambiguities of language, we see little of this trickling down into the public sphere. As a result, we are left with a non-critical political process, and a neutered, anguishing and essentially apolitical philosophy which is more interested in the study of itself than in the study of the world around it.<sup>57,58</sup>

While out of context and regardless of whether the thinker would agree with my analysis of the prison, a reference to the German Enlightenment may help as an example of where we should be headed. Every philosophy student has read (at least once) Kant’s essay “What Is Enlightenment”, to the point that it has been rendered essentially meaningless. Like many of the great works of philosophy, it seems to be read in just about every undergraduate class, and rightly so. Setting the tone for the movement that would reinvent the discipline, Kant declares the Enlightenment to be “man’s release from his self-incurred tutelage.” Instead of relying merely on what one is told, Kant advocates all to think for themselves, and to “dare to know”.

While at this point this essay is almost trite, I think that it offers a powerful argument for the sort of critical analysis of society I am advocating. Many have deemed the Enlightenment itself to be a failure, but certainly all of its ideals cannot be that far off target. By daring to think critically

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57 Jameson, Fredric. *Postmodernism, or The Logic of Late Capitalism*. Duke University Press, 1990.

58 Lyotard, Jean-Francois. *The Post-Modern Condition*. University of Minnesota, 1984.

about society, by rejecting the Manichean view of the world, by embracing the world as beautifully grey; this is the hope of philosophy. The drive to question and the willingness to embrace the ambiguity of life is what will guide us to progress. It is not the result of a narrative, but by critical thought that we will “get there.”<sup>59</sup>

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<sup>59</sup> Kant, Immanuel. *What Is Enlightenment*. 1784.

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24 See “Fair Sentencing Act of 2010 (Public Law 111-220)”

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